

1 SENATE BILL NO. 67

2 1. INTRODUCED BY D. WANZENRIED

3 BY REQUEST OF THE DEPARTMENT OF JUSTICE

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING UNCONSCIONABLE

5 PRICING OF AN ESSENTIAL GOOD OR SERVICE DURING A STATE OF EMERGENCY

6 OR ABNORMAL MARKET DISRUPTION; PROVIDING DEFINITIONS; PROVIDING FOR

7 THE DECLARATION OF AN EMERGENCY OR ABNORMAL MARKET DISRUPTION BY

8 THE PRESIDENT OF THE UNITED STATES OR THE GOVERNOR OR UPON A FINDING

9 BY A DISTRICT COURT; PROHIBITING HOARDING; AND PROVIDING FOR

10 ENFORCEMENT AND PENALTIES."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 8], the following
13 definitions apply:

14 (1) "Abnormal market disruption" means a significant disruption to the production, distribution,
15 or sale of a good or service essential to the health, safety, or welfare of the public; ~~including food,~~
16 ~~water, fuel, shelter, transportation, and medical supplies,~~ in a specific geographic area that is
17 caused by an activating event, such as a natural or human-caused emergency or disaster occurring
18 within ~~or outside~~ the affected area.

19 (2) "Affected area" means the State of Montana.

20 ~~(a) the specific county mentioned or the county of a mentioned city in any declaration, finding, or~~
21 ~~court order under [section 2]; or~~

22 ~~(b) if there is not a county or city mentioned, the entire state.~~

23 (3) "Essential good or service" means food, water, fuel, shelter, transportation, or medical
24 supplies.

25 (4) "Hoarding" means the intentional withholding, obstructing, interfering with, or placing
26 unreasonable restrictions or conditions on the prompt delivery, transportation, or sale, at retail or
27 wholesale, of an essential product good or service during a declaration of a state of emergency or
28 a finding of an abnormal market disruption in the affected area covered by the declaration or
29 finding.

30 (4) (5) "Incident" means any of the following:

1 (a) each sale, at retail or wholesale, of essential goods or services at prices in violation of
2 [sections 1 through 8];

3 ~~(b) each day that essential goods or services are offered for sale, at retail or wholesale, at prices~~
4 ~~in violation of [sections 1 through 8]; or~~

5 ~~(c)~~ (b) each act of hoarding in violation of [sections 1 through 8].

6 NEW SECTION. Section 2. Executive declaration or finding -- court finding -- notice. (1) Except
7 as provided in subsection (2), [sections 1 through 8] apply if any of the following occurs:

8 (a) the president of the United States or the governor of this state declares a state of emergency;

9 (b) the president of the United States or the governor of this state makes a finding of an abnormal
10 market disruption; or

11 (c) a state district court, on a petition by the attorney general ~~or a county attorney~~, makes a
12 finding based on clear and convincing evidence of an abnormal market disruption within 48
13 hours after receipt of the petition. The court shall rule on the petition within 48 hours after receipt
14 of the petition.

15 (2) (a) On a declaration of a state of emergency by the president of the United States or the
16 governor of this state or on a finding of an abnormal market disruption, [sections 1 through 8]
17 may not be applied for more than 10 consecutive days.

18 (b) (i) If the declaration or the finding is renewed, [sections 1 through 8] are applicable for an
19 additional 10 days. The declaration or the finding may be renewed only two times for the
20 purposes of applying [sections 1 through 8].

21 (ii) The president or governor may declare the abnormal market disruption over at any time, and
22 the declaration ends the application of [sections 1 through 8] unless the finding was made by a
23 court pursuant to this section.

24 (c) If a finding of an abnormal market disruption is made by the president of the United States,
25 the governor of this state, or a court pursuant to subsection (1), the attorney general shall publish
26 a notice for 5 days in the newspaper of largest circulation in the affected area. The costs of the
27 notice must be paid from the state special revenue account established in 30-14-143.

28 ~~NEW SECTION. Section 3. Notice of court petition -- stay prohibited. (1) If a county attorney~~
29 ~~petitions a court pursuant to [section 2], the county attorney shall immediately notify the attorney~~
30 ~~general of the petition and the determination of the court.~~

1 ~~(2) A court finding of an abnormal market disruption may not be stayed.~~

2 NEW SECTION. Section 4 3. Unconscionable pricing presumed illegal prohibited.

3 (1) During a declaration of a state of emergency or a finding of an abnormal market disruption,
4 ~~the sale by a person may not offer for sale at an unconscionable price at prices in excess of those~~
5 specified in subsection (2) within the affected area of an essential good or service, at retail or
6 wholesale, within the affected area is presumed to be illegal subject to the defenses set forth in
7 Section 5.

8 (2) A price is prima facie unconscionable if it ~~exceeds~~ is 10% by 20% or more above the average
9 price charged by a other persons within a 50 mile radius of the location of the alleged offense
10 for the same essential good or service during the 7 days prior to the alleged offense for the
11 essential good or service during the 30 days before the declaration of a state of emergency or the
12 finding of an abnormal market disruption.

13 (3) If a person did not offer for sale an essential good or service, at retail or wholesale, within an
14 affected area during the 30 days before the declaration of the state of emergency or the finding of
15 an abnormal market disruption, it is a prima facie violation of subsection (1) to charge a price
16 that represents a gross disparity from the price at which the good or service was readily
17 obtainable in the affected area during the 30 days immediately before the declaration or finding.

18 NEW SECTION. Section 5 4. Hoarding prohibited. During a declaration of a state of emergency
19 or a finding of an abnormal market disruption, a person may not engage in hoarding an essential
20 good or service. However, nothing in [Section 1 through 8] shall prevent a business from closing
21 during the period of emergency or abnormal market condition if legitimate business reasons
22 warrant such action.

23 NEW SECTION. Section 6 5. Defenses. A defendant in an action brought to enforce the
24 provisions of [sections 1 through 8] may assert the following defenses ~~prove that the defendant~~
25 ~~did not violate the provisions of [sections 1 through 8] by producing evidence of either of the~~
26 following:

27 (1) The defendant's net profits in the affected area during the declaration or finding did not
28 increase more than 10% above the defendant's average profits during the 30 days before the
29 declaration of the state of emergency or the finding of an abnormal market disruption; and/or,

30 (2) The increase in the price of an essential good or service during the declaration or finding was

1 attributable to increased production, distribution, or sale costs because of the emergency or
2 abnormal market disruption or other demonstrable reason for an increase in acquisition costs.

3 NEW SECTION. Section 7 6. Enforcement. (1) [Sections 1 through 8] may be enforced by the
4 attorney general ~~or a county attorney of the county in which the violation occurs.~~

5 (2) If the attorney general ~~or a county attorney~~ has a reason to believe that a violation of [sections
6 1 through 8] has occurred, based on consumer complaints or other market references, the attorney
7 general ~~or county attorney~~ shall have the authority to request and may obtain a search warrant or
8 issue subpoenas for relevant books and records directly related to an alleged violation.

9 NEW SECTION. Section 8 7. Penalties. (1) A person who knowingly violates a provision of
10 [sections 1 through 8] is subject to a civil penalty of up to \$1,000 per incident with a maximum
11 penalty of \$25,000 for the duration of the emergency or abnormal market disruption guilty of a
12 misdemeanor punishable by up to 6 months incarceration and a fine of up to \$2,500 for each
13 incident for an individual and a fine of up to \$20,000 for each incident for an enterprise. A
14 violation of [sections 1 through 8] also constitutes a violation of 30-14-103.

15 (2) Fines for cases prosecuted by the attorney general must be deposited in the state special
16 revenue account established in 30-14-143. ~~In cases prosecuted by a county attorney, 10% of the~~
17 ~~finest collected must be deposited in the state special revenue account established in 30-14-143,~~
18 ~~and the court may order the balance of the fines to be returned to the prosecuting agency.~~

19 (3) (a) A person who has violated a provision of [sections 1 through 8] shall return profits from
20 the violation as restitution to victims, if practicable, as determined by a court.

21 (b) If restitution to victims is not practicable:

22 (i) the returned profits ~~for cases prosecuted by the attorney general~~ must be deposited in the state
23 special revenue account established in 30-14-143; and

24 (ii) ~~in cases prosecuted by a county attorney, 10% of the returned profits must be deposited in the~~
25 ~~state special revenue account established in 30-14-143, and the court shall order the balance of~~
26 ~~the returned profits to be paid to the prosecuting agency.~~

27 NEW SECTION. Section 8. Codification instruction. [Sections 1 through 8] are intended to be
28 codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14,
29 apply to [sections 1 through 8].